

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	Case No. 0408004910
)	
RAHEEN YOUNG,)	
)	
Defendant.)	

Submitted: January 6, 2006
Decided: February 23, 2006

Colleen Norris, Esquire
Attorney-At-Law
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
Attorney for the State of Delaware

Lydia S. Cox, Esquire
Attorney-At-Law
Assistant Public Defender
900 N. King Street
Wilmington, DE 19801
Attorney for Defendant

**DECISION ON DEFENDANT'S MOTION
FOR RELIEF FROM SEX OFFENDER DESIGNATION**

Defendant Raheen Young having been convicted following trial by jury of Unlawful Sexual Contact Third Degree, in violation of 11 *Del. C.* § 767, brings this motion for relief from Sex Offender registration pursuant to 11 *Del. C.* § 421(6)(c). Raheen Young (hereinafter "defendant") was arrested on August 5, 2004 and charged with Offensive Touching in violation of 11 *Del. C.* § 601 and Unlawful Sexual Contact in the Third Degree, in violation of 11 *Del. C.* § 767. On August 15, 2005, a jury found defendant guilty of Unlawful Sexual Contact in the Third Degree, and not guilty of Offensive Touching.

Under the provisions of 11 *Del. C.* § 4121(3)(1), upon defendant's conviction of Unlawful Sexual Contact in the Third Degree in violation of 11 *Del. C.* § 767, he is required, unless otherwise ordered by the Court, to register as a sex offender and assigned to Risk Assessment Tier I. Defendant filed a Petition for Relief from Designation as a Sex Offender pursuant to 11 *Del. C.* § 4121(e)(6). The Court conducted a hearing on the petition December 1, 2005, where Dr. Richard D. Gingrich, MPSSC, CCBT, CAS (hereinafter "Dr. Gingrich") who had performed a psychosexual evaluation of defendant on August 22, 2005 testified.¹ The parties were permitted to submit post-hearing briefs. This is the Court's decision on defendant's petition.

The State argued both at the December 1, 2005 hearing and in its brief that defendant should be required to register as a Tier 1 Sex offender because defendant failed to meet his burden to show by a preponderance of the evidence that he is not likely to pose a threat to public safety if released from registration requirements of 11 *Del. C.* § 4121(e)(6) and § 4120. In support of its position, the State maintains that because Dr. Gingrich failed to conclude after evaluation defendant did not pose *any* threat to the community, defendant has therefore failed to meet his burden under the statute. In response, defendant argues that he is not required to show, as the State suggests, that the defendant will not pose any threat to the community, but instead, 11 *Del. C.* § 4121(e)(6) only requires a showing that defendant is not *likely* to pose a threat to the community if released from the registration obligations. In support of its position, defendant offers the testimony and evaluation of Dr. Gingrich who stated that defendant presented a "low-risk" to the community.

¹ Defendant's Exhibit No. 1, Psychosexual Evaluation prepared by Robert D. Gingrich, MPSSC, CCBT, CAS, August 22, 2005.

11 Del. C. § 4121(e)(6) provides in relevant part as follows:

“(6) Notwithstanding any provision in this section or in § 4120 of this title to the contrary, any person who would otherwise be designated as a sex offender pursuant to this section and to § 4120 of this title may petition the sentencing court for relief from such designation, and from all obligations imposed by this section and § 4120 of this title if:

- a. The offense for which the person was convicted was a misdemeanor and the victim was not a child under 12 years of age; and
- b. The person has not previously been convicted of a violent felony, or any other offense set forth in subsection (a)(4) of this section, or any offense specified in the laws of another state, the United States or any territory of the United States which is the same as, or equivalent to, such offenses; and
- c. The sentencing court determines by a preponderance of the evidence that such person is not likely to pose a threat to public safety if released from the obligations imposed by this action, and by § 4120 of this title

Notwithstanding anything in this paragraph to the contrary, no person shall be afforded relief from designation as a sex offender if the victim or victims of any of the offenses for which person was convicted were less than 18 years old at the time of the crime, unless the person was also less than 18 years old at the time of the crime in which case the prohibition set forth in this sentence shall not apply. Any person seeking relief from designation as a sex offender under this paragraph shall file a petition with the sentencing court prior to sentencing requesting such relief. The petition shall be granted or denied by the sentencing court after it weighs *all relevant evidence* which bears upon the *particular facts and circumstances of the offense*, and the *character and propensities of the offender*.”

To be considered under this provision, the offense which the defendant is convicted of must be a misdemeanor; the victim must not be a child under age 12; and the defendant must not have previously been convicted of a violent felony or any other offense as set forth in 11 Del. C. § 4121(a)(4). A review of defendant’s criminal record indicates he has not been convicted of a violent felony. Defendant is 23 years old with a date of birth of August 8, 1982, and has only been convicted in August, 2002 for underage drinking

and for loitering on school property after 1:00 a.m. The victim in this incident is not a child under the age 12. Therefore, defendant is eligible to petition the Court for relief from sexual offender registration. This leaves the Court with the final issue, which is whether there exists by the preponderance of the evidence defendant is not likely to pose a threat to public safety if excused from the sexual registration provisions. This requires the Court to analyze the facts surrounding the allegations and the character and propensities of the defendant. This evaluation by its very nature has to include the psychological evaluation of the defendant.

The facts at trial indicate defendant and victim (Tabbitha Colamaia) were both employees at the Sears retail store located in the Prices Corner Shopping Center, Wilmington, Delaware. Defendant was employed in Sears' Loss Prevention Department as a Security guard. The victim was employed as inventory stock person and he first met the victim when she went to security to inquire where to go for her job. A work related friendship developed thereafter and there was regular communication up until the date of the incident. The only outside work communication consist of e-mail conversation on the internet.

The victim testified at trial on August 15, 2004 that on the morning of the incident, the defendant approached her, gave her a hug and then grabbed her breast. She pushed him away, attempted to kick him and he grabbed her foot. She then went to the break room to get away from defendant to speak to a manager, but he followed her. Defendant testified he followed her to apologize for the incident, but she refused to speak to him. She went downstairs and reported the incident. The victim testified she refused to speak to defendant after the incident. During defendant's direct examination, he

testified that the night prior to the incident, the victim indicated during their e-mail conversation that “If you see me tomorrow, give me a hug.” He also testified the victim informed him she was getting her nipples pierced for her birthday as a present from her boyfriend. On the day of the incident, August 5, 2004, the victim testified defendant gave a hug and started jerking me around” and as she backed away, defendant grabbed her breast and “applied pressure.” The victim informed the manager at Sears what occurred and the police were notified.

Defendant was arrested later that day and admitted to the police that he was “feeling for a pierced nipple.” Defendant testified at trial that he “brushed against her breast.” The jury found defendant guilty of Unlawful Sexual Contact in the Third Degree, and not guilty as to Offensive Touching.

On September 22, 2005, Dr. Gingrich performed a psychosexual evaluation of defendant. Dr. Gingrich testified that although defendant admitted during police interview on August 5, 2005 that he grabbed the victim’s breast in order to feel for her pierced nipple, during the evaluation he gave a different version of the facts and “denied any pre-thought’ regarding his actions. Dr. Gingrich concludes in his written report;

“ . . . It is my opinion that sexual pre-thought was present and he was attempting to feel the piercing for sexual arousal and curiosity. It also appears as though Mr. Young felt he was being invited into a potential relationship.

In spite of Mr. Young’s less than honest portrayal of the sexual assault, I do not feel Mr. Young presents a serious threat to the community. It appears as though there are no prior incidents of sexual misconduct and does not present as having an apparent psychological, anti-social or predatory patters to his behavior. A group therapy milieu for low risk first time sex offenders in addition to his probation supervision should be adequate in maintaining Mr. Young safely within the community.²

² Defendant’s Exhibit No. 1.

Dr. Gingrich further concluded that when considering defendant's background, his actions towards the victim can best be described as sexually inappropriate, but not sexually deviant. Dr. Gingrich concluded that defendant, however, acted with poor judgment. At the hearing, Dr. Gingrich testified that while it was impossible to conclude there is no risk, however, it is his opinion there is minimal risk. This conclusion is based upon the defendant's history, facts of the incident, and evaluation.

In evaluating whether or not defendant would likely pose a threat to the community, Dr. Gingrich further concluded that defendant exhibited none of the "risk factors," which include antisocial behavior, prior criminal history or time spent in prison, and childhood sexual or physical abuse. Dr. Gingrich testified that he did not observe any manifest characteristic traits in defendant for antisocial behavior resulting from a confluence of an ability to manipulate others, charismatic charm, prior criminal history, or history of committing robberies. Dr. Gingrich noted that defendant has assumed a care-taking role for his father and other relatives. Although Dr. Gingrich explained that in some instances this can make young adults slightly less mature for their age, and arguably less "socialized," Dr. Gingrich testified that in defendant's case, he considers defendant's care-taking role a display of "responsible behavior."

The facts of this incident reveal two young individuals who developed a friendship at work which spilled into an internet communication relationship outside of work, which touched on the subject of sex-related activities. The outside work relationship consisted and was limited to computer-generated e-mail on AOL instant chat messaging. While there is some dispute regarding how the pierced nipple conversation developed, it is clear that neither of the parties were offended by conversation involving

such matters. The defendant testified he was invited to give victim a hug, which is not disputed by the victim. The victim, however, denies she invited the breast touching, and this is borne out by the facts. The action of the defendant immediately following the incident was to apologize, and he followed the victim to the break room attempting to make amends for his action. This shows remorse and that the defendant found his action unwelcome. This subsequent behavior indicates the defendant now knows such action is inappropriate, and the likelihood of repeating it can be considered remote.

Based on analysis of the facts surrounding the offense and Dr. Gingrich's evaluation and testimony, this Court finds by a preponderance of the evidence that defendant is not likely to pose a threat to the community (public safety) if relieved from the obligations of registration. The petition is hereby Granted. The Clerk will schedule the defendant for sentencing.

SO ORDERED this 23rd day of February, 2006

Alex J. Smalls
Chief Judge